

What About IHSS?

IN-HOME SUPPORTIVE SERVICES

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STATE OF CALIFORNIA
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HEALTH AND HUMAN SERVICES AGENCY
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DEPARTMENT OF DEVELOPMENTAL SERVICES
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INTRODUCTION

HOW TO APPLY FOR IN-HOME SUPPORTIVE SERVICES (IHSS)

Contact the local County Welfare/Social Services Office to apply for IHSS. The IHSS program is usually part of the adult services section. Each county is responsible for receiving applications for IHSS services, determining eligibility and assessing the need for IHSS services. Check the local telephone directory for a listing in the County Government section.

WHAT ABOUT IHSS?

IHSS provides critical services to adults and children with developmental disabilities who live in the community in their own or family homes. This booklet is provided by the Department of Developmental Services (DDS) as a guide to the In-Home Supportive Services (IHSS) program for its regional centers, vendors and others who coordinate and/or provide services to these individuals.

The California Department of Social Services (CDSS) has oversight of county IHSS operations and the federal and state funds used to pay for services provided. The CDSS is also responsible for the Manual of Policies and Procedures, Division 30, which contains regulations for IHSS and the Personal Care Services Program, and for Division 22 which contains the regulations for fair hearings.

The laws, regulations and policies used in this guide are current as of the date of publication; however, they may change at any time. Many of the laws, regulations and policies discussed are paraphrased to cover the most common situations. The final word is the law, regulation or policy in effect at the time of application for or use of IHSS services. Be sure to consult those laws, regulations or policies or with the local county social services office about unique situations.

CONTENTS

The *Services Provided By IHSS* section lists the types of services that may be authorized by IHSS. Starting with the *Eligibility* section this guide goes into the how-to details for understanding and working with IHSS. It includes references to the laws, regulations and policies and procedures that apply to each subject. The *Appeal / State Hearing* section provides information about the state hearing process for IHSS. The *Appendix* provides general information about the IHSS program and information on how to obtain documents mentioned in this guide.

THANKS

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ABBREVIATIONS

The following abbreviations are used in this publication.

, ACL	All County Letter (Issued by CDSS)
, ACIN	All County Information Notice (Issued by CDSS)
È CCR	California Code of Regulations
È CDSS	California Department of Social Services
È CFR	Code of Federal Regulations
È DDS	California Department of Developmental Services
È IHSS	In-Home Supportive Services
È et seq.	and the following
È IP	Individual Provider
, IPP	Individual Program Plan
È MPP	Manual of Policies and Procedures (CDSS)
È PCSP	Personal Care Services Program (Medi-Cal)
, SSI	Supplemental Security Income
, SSP	State Supplementary Payment Program
È U.S.C.	United States Code
, W & I Code . .	Welfare and Institutions Code
, §	Section number

DEFINITIONS

- , **Advance Payment** (direct advance payment) is a payment to be used for the purchase of authorized IHSS services which is sent directly to the recipient in advance of the service actually being provided.
[W & I Code §12304(a); MPP 30-701(d)(3)]
- È **Assessment** is the gathering of information relevant to a person's case and an appraisal of the services needed based on that information.
[MPP 30-002(a); 30-002(s)(6)]
- , **Authorized representative** for IHSS purposes is an individual or organization that has been authorized by the recipient (or designated by the ALJ for state hearings) to act for him or her in matters related to the IHSS program. An authorized representative may include legal counsel, a relative, friend or other person. [MPP 22-001(a)(5); 30-002(r)(3)]
- È **Consumer** is an individual who meets the criteria for regional center services and for whom the regional center has accepted responsibility. The CDSS uses the term "recipient" for applicants and for those receiving social services.
[MPP 30-002(r)(2); 30-701(c)(3)]
- È **Eligible** means entitled to receive necessary services. [MPP 30-002(e)]
 - Income eligible** means entitled on the basis of having gross annual family income which does not exceed 80% of the median income for California for a family of four, adjusted for consideration of family size.
 - Status eligible** means entitled on the basis of being a Supplemental Security Income/State Supplementary Payment (SSI/SSP) or a CalWORKS program recipient.
- È **In-Home Supportive Services (IHSS)** provides assistance to those eligible aged, blind and disabled individuals who are unable to remain safely in their own homes without this assistance. IHSS is an alternative to out-of-home care.
[MPP 30-700.1]
- È **Generic Agency** means any agency which has a legal responsibility to serve all members of the general public and which is receiving public funds for providing such services. [W & I Code §4644(b)]
- È **Live-In Provider** is a provider who is not related to the recipient and who lives in the home expressly for the purpose of providing IHSS-funded services.
[MPP 30-701(l)(3)]

- Ë **Own Home** means the place in which an individual chooses to reside. Own home does NOT include: acute care hospital, skilled nursing facility, intermediate care facility, community care facility, or board and care facility.
[MPP 30-701(o)(2)]
- Ë **Payment Period** is the time period for which IHSS wages are paid. There are two payment periods each month, 1) covering the first to the fifteenth of the month, and 2) covering the sixteenth to the end of the month.
[MPP 30-701(p)(2)]
- Ë **Personal Attendant** means a provider who is employed by the individual and who spends at least 80% of his/her time in the individual's employ performing the following services:
- Preparation of meals.
 - Meal clean-up.
 - Planning of menus.
 - Consumption of food.
 - Routine bed baths.
 - Bathing, oral hygiene and grooming.
 - Dressing.
 - Protective supervision. [MPP 30-701(p)(4)]
- Ë **Personal Care Services Program (PCSP)** provides personal care services and ancillary services prescribed in accordance with a treatment plan.
[MPP 30-700.2; 30-780]
- Ë **Protective Supervision** protective supervision is available for monitoring the behavior of non-self directing, confused, mentally impaired or mentally ill persons.
[MPP 30-756.37; 30-757.17]
- Ë **Reassessment** is a review of all past assessments and examination of the current condition of the individual. [MPP 30-002(r)(1)]
- Ë **Recipient** is a person receiving In-Home Supportive Services.
[MPP 30-701(r)(l)]
- Ë **Regional Center:** The Department of Developmental Services contracts with 21 non-profit regional centers in California to provide assessment and coordination of services for individuals with developmental disabilities.
- Ë **Residual** refers to the State and county funded portion of the In-Home Supportive Services Program. This is also known as the non-PCSP program.

- È **Severely Impaired** means a person who requires in-home supportive services of at least 20 hours per week to carry out any or all of the following: *[W & I Code §12304(d); MPP 30-701(s)(1)]*
- Routine bodily functions, such as bowel and bladder care, menstrual care, and respiration assistance.
 - Dressing, oral hygiene, and grooming.
 - Preparation and consumption of food and meal cleanup for individuals who require assistance with the preparation and consumption of food.
 - Moving into and out of bed, other assistance in transferring, turning in bed, and other repositioning.
 - Range of motion exercises.
 - Bathing, routine bed baths, and washing.
 - Ambulation and care and assistance with prosthesis.
 - Rubbing of skin to promote circulation.
- C Paramedical services.
- C Any other function of daily living as determined by the Director.
- È **Supportive Services** include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement. Supportive services includes paramedical services. *(Note: Protective supervision is not included in the IHSS (PCSP) but, if needed, is included in IHSS (residual)). [W & I Code §12300.1]*

SERVICES PROVIDED BY IHSS

The following services are available when authorized by IHSS.

PERSONAL CARE

[W & I Code §12300(b); (c): 12300.1; 14132.95(d)]

- C **Ambulation.** Includes assistance with walking or moving around (e.g., wheelchair) from place to place inside the home; moving into and out of bed, on and off seats and wheel chairs, into and out of vehicles; changing locations in a room; moving from room to room to gain access for the purpose of engaging in other activities. It does not include movement solely for the purpose of exercise. *[MPP 30-757.14(g), (h), (k); 30-780.1, PCSP]*
- C **Bathing** includes cleaning the body using a tub, shower or sponge bath, including getting a basin of water, managing faucets, getting in and out of the tub or shower, reaching head and body parts for soaping, rinsing and drying. *[MPP 30-757.14(d); 30-757.14(e); 30-780.1, PCSP]*
- C **Bowel and bladder** care, including assistance with enemas, emptying of catheter or ostomy bags, assistance with bed pans, changing rubber sheets and assistance with getting on and off commode or toilet. Also includes emptying the commode, managing the clothing and wiping and cleaning the body after toileting, application of diapers and disposable barrier pads. *[MPP 30-757.14(a), 30-780.1, PCSP]*
- C **Dressing** includes putting on and taking off, fastening and unfastening garments and undergarments, and special devices such as back or leg braces, corsets, elastic stockings/garments. *[MPP 30-757.14(f); 30-780.1, PCSP]*
- C Range of motion and other **exercises.** Includes general supervision of exercises which have been taught to the individual by a licensed therapist or other health care professional. *[MPP 30-757.14(g); 30-780.1 and 30-780.2(h)(2), PCSP]*
- C **Feeding** and assurance of adequate **fluid intake.** This includes related assistance to recipients who cannot feed themselves or who require assistance with special devices in order to feed themselves or to drink adequate liquids. This includes reaching for, picking up, grasping utensil, cup to mouth, manipulating food on plate and cleaning face and hands as necessary following the meal. *[MPP 30-757.14(c); 30-780.1, PCSP]*
- C **Grooming** includes hair combing and brushing, shampooing, oral hygiene, shaving and fingernail and toenail care (excluding cutting with scissors or clipping toenails). *[MPP 30-757.14(e); 30-780.1 and 30-780.2(f), PCSP]*

- C Assistance with self-administration of **medications**. Includes reminding the individual to take prescribed and/or over-the-counter medications when they are to be taken and setting up Medi-sets (pill organizer container). *[MPP 30-757.14(i); 30-780.1, PCSP]*
- C **Menstrual care** limited to application of sanitary napkins and external cleaning. *[MPP 30-757.14(j); 30-780.1 and 30-780.2(g), PCSP]*
- C **Prosthesis care** and assistance. *[MPP 30-757.14(i); 30-780.1, PCSP]*
- C **Repositioning and skin care**. Includes moving from one sitting or lying position to another sitting or lying position; e.g., from bed to or from a wheelchair, chair, or sofa, and the like, coming to a standing position. Also, rubbing of skin to promote circulation, turning in bed and other types of repositioning. If decubiti have developed, the need for skin and wound care is a paramedical service. *[MPP 30-757.14(i); 30-780.1 and 30-780.2(h), PCSP]*
- C **Respiration care** is limited to non-medical services such as assistance with self-administration of oxygen, cleaning IPPB machines, assistance in the use of a nebulizer, and cleaning oxygen equipment. *[MPP 30-757.14(b); 30-780.1, PCSP]*

DOMESTIC SERVICES

- C **Cleaning**. This includes sweeping, vacuuming, washing and waxing of floor surfaces; washing kitchen counters and sinks; storing food and supplies; cleaning the bathroom; taking out garbage; dusting and picking up; cleaning oven and stove; cleaning and defrosting refrigerator; and changing bed linen. *[MPP 30-757.11; 30-780.1, PCSP]*
- C Bringing in **fuel** for heating or cooking from a fuel bin in the yard. *[MPP 30-757.11; 30-780.1, PCSP]*
- C **Miscellaneous chores**, such as changing light bulbs, when it would be a hazard to the individual if not done. This also includes wheelchair cleaning, changing and recharging wheelchair batteries when the service is identified and documented by the case worker as necessary for the person to remain safely in his/her home. *[MPP 30-757.11(k); 30-780.1, PCSP]*
- C **Shopping** for food and other necessities. This includes making a list, travel to and from the store, shopping, loading, unloading, and storing supplies purchased. Shopping and errands are limited to the nearest available stores or other facilities consistent with the recipient's economy and needs, and phoning in and picking up prescriptions. It may include delivering a delinquent payment to avert an imminent utility shut-off. It does not include additional time for the individual to accompany the service provider. *[MPP 30-757.136; 30-780.1, PCSP]*

RELATED SERVICES

- C Preparation of **food**. This includes tasks such as washing vegetables, trimming meat, cooking, setting the table, serving the meal and cutting the food into bite-size pieces. [MPP 30-757.131; 30-780.1, PCSP]
- C Routine **laundry**. This includes washing and drying, mending, ironing, folding, and storing clothes on shelves or in drawers. Also, manipulating soap containers, reaching into machines, handling wet laundry, operating machine controls, hanging laundry to dry if dryer is not routinely used. [MPP 30-757.135; 30-780.1, PCSP]
- C **Meal cleanup**. This includes washing and drying dishes, pots, utensils and culinary appliances, and putting them away. [MPP 30-757.132; 30-780.1, PCSP]
- C **Menu planning**. [MPP 30-757.133, 30-780.1, PCSP]
- C **Restaurant meal allowance**. A person who has adequate cooking facilities at home but whose disabilities prevent their use has a option to receive a restaurant meal allowance in lieu of menu planning, meal preparation and meal cleanup. A recipient who receives a restaurant meal allowance as part of his/her SSP grant cannot receive a restaurant meal allowance from IHSS. (Note: see additional information in the Assessment section.) [W & I Code §12303.7; MPP 30-757.134; 30-765.13]

OTHER SERVICES

- C Heavy **cleaning** includes thorough cleaning of the home to remove hazardous debris or dirt. (Note: This may only be authorized under very restricted conditions and should not apply to most persons.) [MPP 30-757.12; 30-780.1, PCSP]
- C **Protective Supervision** is available for monitoring the behavior of non-self directing, confused, mentally impaired or mentally ill persons. (Note: see additional information in the Assessment section.) [MPP 30-757.17]
- C **Respite care** to relieve persons who are providing care without compensation. [W & I Code §12300(e); MPP 30-763.44]
- C **Teaching and demonstration** services provided by IHSS providers to enable individuals to perform for themselves services which they currently receive from IHSS. This is limited to instructions in the tasks of domestic services, meal planning, preparation and clean-up, shopping and errands, personal care, and yard hazard abatement. This is authorized for no more than three months and only when there is a reasonable expectation that there will be a reduction in the need for an IHSS funded service. [MPP 30-757.18]

- C **Transportation** when the individual's presence is required at the destination and assistance is needed to accomplish the travel. Travel is limited to transportation to and from appointments with doctors, dentists and other health practitioners and for fittings for health related appliances/devices and special clothing where Medi-Cal will not provide transportation. It also includes transportation to sites where the individual receives in-home supportive services from alternative resources in lieu of IHSS. *[W & I Code §12300(b); MPP 30-757.15; 30-780.1(5(b)), PCSP]*
- C **Yard hazard abatement** is light work in the yard. This may include removal of high grass/weeds or rubbish when this constitutes a fire hazard or removal of snow when access to the home is hazardous. *(Note: This does not include routine yard maintenance and is not meant to replace the need for routine maintenance.)* *[MPP 30-757.16; 30-780.1, PCSP]*

PARAMEDICAL SERVICES

Paramedical services are activities that the individual would normally provide for him/herself but cannot due to physical limitations. They are provided when ordered by a licensed health care professional and provided under the direction of the licensed health care professional. The time allowed is based on time indicated by the health care professional. *[W & I Code §12300.1; MPP 30-757.19]*

These services include administration of medications, puncturing the skin, inserting a medical device into a body orifice, activities requiring sterile procedures, or other activities requiring judgment based on training given by a licensed health care professional. Catheter insertion, ostomy irrigation and bowel program are considered to be paramedical. *[MPP 30-757.191(c); 30-780.1, 30-780.2(g), PCSP]*

These services are provided by persons who ordinarily provide IHSS and at the same rate of pay as regular IHSS services. *[MPP 30-757.195]*

In order to provide paramedical services, the county must have a signed and dated order from a licensed health care professional. The order must include a signed statement of informed consent saying that the individual has been informed of the potential risks arising from the receipt of the services. *[MPP 757.196; 30-780.2(e), PCSP]*

ELIGIBILITY

The IHSS Program uses SSI/SSP income and resource standards as income guidelines in determining eligibility for residual program services. *[MPP 30-770; 30-773; 30-775]*

IHSS services may be authorized under either IHSS (Residual) or the Personal Care Services Program (PCSP). Most people receiving IHSS qualify for the PCSP which is partially funded by the federal medicaid (Medi-Cal) program. If a person is eligible for IHSS under both IHSS (Residual) and the PCSP, services will be authorized under the PCSP. A person cannot receive the same personal care services through both IHSS (Residual) and the personal care services program.

[W & I Code §12300(f); MPP 30-757.1, 30-780, PCSP]

Eligibility is determined at the time of application, at twelve month intervals, and anytime information is received about changes in the individuals's situation. *[MPP 30-755.21]*

ELIGIBILITY FOR IHSS

A person is eligible for IHSS who is a California resident who is living in his or her own home, and who meets one of the following conditions: *[MPP 30-755.1; 30-770.4]*

- < Currently receives SSI/SSP benefits. (A person who receives the SSI out-of-home board and care rate does not qualify for IHSS. This is considered to be non-medical out-of-home care. The SSI board and care rate includes care and supervision for that individual.) *[MPP 30-701(o)(2); 30-763.72]*
- < Medically needy aged, blind or disabled. *[W & I Code §14132.95]*
- < Meets all SSI/SSP eligibility criteria, except for income in excess of SSI/SSP eligibility standards.
- < Was once eligible for SSI/SSP benefits, but became ineligible because of engaging in substantial gainful activity, and meets all of the following conditions:
 - The individual was once determined to be disabled in accordance with Title XVI of the Social Security Act (SSI/SSP).
 - The individual continued to have the physical or mental impairments which were the basis of the disability determination.
 - The individual requires assistance in one or more of the areas specified under the definition of "severely impaired individual" (see *Definitions* in the Appendix). *[W & I Code §12305.5]*
- < Otherwise eligible applicants who are currently institutionalized or in a licensed residential arrangement, who wish to live in their own homes and who are capable of safely doing so if IHSS is provided, shall upon application receive IHSS based upon a needs assessment. *[MPP 30-753(o); 30-755; 30-770.4]*

Eligibility for **IHSS (PCSP)** is limited to individuals who:

- < Do not receive advance IHSS payment [MPP 30-780.4];
- < Receive SSI (are not just SSI eligible);
- < Receive IHSS from someone other than a spouse, or from a parent if the recipient is a minor; [W & I Code §14132.95(f)]
- < Need one or more of the kinds of personal care as defined in W & I Code §14132.95(d)(1)¹; and
- < Has a disabling condition that causes functional impairment that is expected to last at least 12 consecutive months, or that is expected to result in death within 12 months, and who would be unable to remain safely in his or her own home if these services were not provided. [W & I Code §14132.95]

In cases with **excess income**, eligibility can be established with payment of a share of cost. Excess income is income that would disqualify a person for SSI/SSP. However, if a person is eligible for SSI/SSP except for the excess income and the total income is insufficient to provide for the cost of care needed, he or she would be qualified for IHSS but the excess income would have to be used toward the purchase of needed IHSS type services. (Note: Non-payment of a share of cost will cause a person to become ineligible for IHSS.) [W & I Code §12304.5; MPP 30-755.233; 30-755.31]

Minors under age 18 and living at home who meet the criteria of the Department of Developmental Services Home and Community-based Services waiver institutional deeming rules should be assessed for PCSP eligibility.

The Personal Care Services Program services do not include protective supervision. If this is authorized, it is provided through the IHSS (Residual) program.

¹ **Welfare and Institutions Code (W & I Code) §14132.95**

- (d)(1) For purposes of this section, personal care services shall mean all of the following:
 - (A) Assistance with ambulation.
 - (B) Bathing, oral hygiene and grooming.
 - (C) Dressing.
 - (D) Care and assistance with prosthetic devices.
 - (E) Bowel, bladder, and menstrual care.
 - (F) Skin care.
 - (G) Repositioning, range of motion exercises, and transfers.
 - (H) Feeding and assurance of adequate fluid intake.
 - (I) Respiration.
 - (J) Paramedical services.
 - (K) Assistance with self-administration of medications.
- (2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.

ALIEN ELIGIBILITY

If an applicant is an **alien** permanently residing legally in the U.S., he or she may be eligible for IHSS to the extent permitted by federal law. An alien is eligible for services only if he or she has been lawfully admitted for permanent residence, or is otherwise permanently residing in the United States under color of law. No aid will be paid unless evidence as to eligible alien status is presented. *[W & I Code §111104; 12305.6; MPP 30-770.41; 20 CFR 416.1615(a); 20 CFR 416.1618(b)-(e)]*

ABSENCE FROM STATE

If a person receiving IHSS is **absent from the state** for 30 days or longer, it is considered to be a possible change of residence that will affect eligibility. If a person leaves or is leaving the state for 30 days or longer, the county IHSS office must be notified. In some instances eligibility may continue until his or her return, or payment for IHSS may be made out of state. *[MPP 30-770.42]*

CHANGE OF ELIGIBILITY STATUS

An IHSS recipient has responsibility to report any **change of eligibility status** to the county IHSS office within 10 calendar days of any change. *[MPP 30-760.14]*

INTERCOUNTY TRANSFER

When an IHSS recipient moves from one county to another, the County Welfare/Social Services Office of each county is responsible for transfer of the case to the new county. It is important to notify the local IHSS office before the move when moving to a different county so the **intercounty transfer** process can start. There should be no break in funding during this period. *[MPP 30-701(i)]*

APPLICATION

BEFORE THE APPLICATION

If the individual is not already living in his or her own home, begin preparation for the IHSS application when the individual first decides to move into his or her own home. Because receipt of or eligibility for SSI/SSP is essential to receiving IHSS, now is the time to apply for SSI/SSP if the individual is not already receiving it. Also, it is desirable to establish Medi-Cal eligibility as soon as possible, although it can be determined concurrently with the IHSS assessment process. County IHSS workers can complete an assessment while the consumer is still in a hospital or skilled nursing facility.

WHEN TO APPLY

If moving into a new home, apply on the first day the individual is in his or her own home, or as soon as the individual knows where he or she will be living. Otherwise, apply as soon as there is a need for services provided by IHSS. The application may be done in writing or by telephone either by the individual or through another person on his or her behalf. If done by telephone, a county social services staff member may be given authorization to sign the application. Be sure to state that you are making an application for IHSS and document the date, person you spoke to, etc., in case follow-up is needed. The county is required to accept an application once they are told the purpose of the call or contact. *[MPP 30-009.22]*

The application must be processed within 30 days following the application. This includes eligibility determination, the needs assessment and the notice of action. An exception to the 30-day requirement may be made when a disability determination has not been received within the 30-day period, or the person has not moved into his or her own home.

Emergency services may be authorized to aged, blind or disabled persons prior to completion of a needs assessment pending a final determination of disability. For a disabled applicant, eligibility may be presumed if the applicant is not employed and has no expectation of employment within the next 45 days, and if in the county's judgment the person appears to have a mental or physical impairment that will last for at least one year or end in death. *[MPP 30-759.3 and .8; 30-761.11]*

Benefits may be approved back to the date of the initial application (or move-in date, whichever is later) regardless of when the assessment is done. *[MPP 30-009.227; 30-759.2; 30-759.4]*

INFORMATION REQUIRED

The following information is needed when making the initial call:

- < Full name of the individual.
- < Sex.
- < Social Security Number. If the person is an alien with no social security number, see the *Eligibility Section*.
- < Telephone number.
- < Address where the person is living or will be living. This must be the home where the person will receive services.
- < Date the individual moved in or plans to move in.
- < Date of birth.
- < Age.
- < Ethnicity [MPP 30-759.1]
- < Primary language [MPP 30-759.1]
- < Spouse's name (if married).
- < Spouse's social security number.
- < The name and relationship of any other person that will live in the home.²
- < Whether others living in the home will apply for or are already receiving IHSS.
- < Medical insurance information, Medi-Cal number or other insurance number.
- < Confirmation of:
 - C The individual receiving SSI/SSP; *or*
 - C Eligibility for SSI/SSP, but not receiving SSI/SSP; *or*
 - C Meeting SSI/SSP eligibility except for excess income.

The county IHSS worker may ask to see confirmation at the time of the home visit.

Confirmation may be established by a current SSI/SSP Notice of Determination; a current SSI/SSP benefit check; a current Medi-Cal card; or by IHSS staff verification with the Social Security District Office. Expect processing to take longer if the person is not already receiving SSI/SSP or has not already been determined to have eligibility. Persons with institutional deeming should have a Department of Developmental Services Waiver Referral form from the Regional Center.
[MPP 30-755.22]

Confirmation of disability and income may be required along with other information. Regional Center case file information may meet some of these requirements. If SSI/SSP has been applied for, some of that information may be used.
[MPP 30-755.26]

Once the application is filed, a home visit will be scheduled for the assessment.

² A housemate means a person who shares a living unit with a recipient. Live-in provider means a provider who is not related to the recipient and who lives in the home expressly for the purpose of providing IHSS-funded services. Do not call a live-in provider/attendant a roommate as this may cause an error in the assessment of authorized hours for some services.
[MPP 30-701(h)(2); 30-753(h)(2); 30-753 (l)(3); 30-763.47]

ASSESSMENT

A needs assessment must be done before authorization of any IHSS services and at least every twelve months after that. An assessment must also be done whenever the county has information that the person's needs have changed, including a change of residence. [MPP 30-755.22]

Although some counties may accept an application before the move, according to regulation, the assessment may be done only after the person is in his or her own home.

- | | |
|---------------|--|
| MPP 30-756.33 | "The recipient's needs shall be assessed within his/her environment, ..." |
| MPP 30-761.13 | <p>Services shall be authorized only in cases which meet the following condition:</p> <p>"Social services staff of the designated county department has had a face-to-face contact with the recipient in the recipient's home at least once within the past 12 months, ... "</p> |

PREPARING FOR THE ASSESSMENT

Spend time with the individual and, with his or her permission, anyone else who knows the details of the individual's needs before the assessment appointment. Be sure the person knows that intimate details may be discussed in order to present an accurate picture of the services and time needed for personal care as well as domestic services. Let the person know that he or she can expect to be treated with dignity and respect by the county social services staff.

Review the *Services Provided by IHSS* section. List every domestic and personal service that is needed for the individual to live safely in his/her home and that is needed to prevent placement back into an institutional or other more restrictive setting. Then list the time required for each of these services. Use this checklist at the assessment interview to be sure that everything is covered.

When preparing this checklist think about things that may be out of the ordinary or may not be readily visible during the assessment. Some examples are:

- < More frequent dusting and vacuuming because of allergies or respiration problems.
- < More frequent changing and laundering of bed linens because the person spends a lot of time in bed, sweats a lot while in bed, or is incontinent.
- < More preparation time is used for meals because of a special diet.
- < Sensitive skin requires that laundry be put through an extra rinse.
- < Feeding takes additional time because of a tendency of the person to choke.
- < Shopping for food takes longer because the market is a long distance from the home.

Create a list of all IHSS type services that are provided by others whether paid or not. IHSS is not intended to replace volunteer or unpaid services with paid support. However, the time used for these services may be used to establish whether a person meets the 20 hours per week of personal care needs to be classified as severely impaired. Some examples are:

- < Individual spends time with family or friends who take care of personal care needs during those visits.
- < Some of the personal care needs are met while at a day or work program.
- < Individual gets personal care while attending school through the school district or other program.
- < Individual gets paramedical services from a visiting nurse, etc.

[MPP 30-761.273]

Plan to be there when the assessment is to be done. The IHSS worker will observe and discuss the person's needs. If the person needs help with communication be sure to have someone there to help facilitate.

DETERMINING THE NEED

The county social service staff determines the need for services based on all of the following:

- < The recipient's physical/mental condition or living/social situation.
- < The recipient's statement of need.
- < Available medical information.
- < Other information that he or she considers to be necessary and appropriate to assess the recipient's needs. *[W & I Code §12309(b); MPP 30-761.26; 30-763.1]*

In addition, the needs assessment form must include the following:

- < Recipient information including age, sex, living situation, the nature, and extent of the recipient's functional limitations, and whether the recipient is severely impaired.
- < The types of services to be provided through the IHSS program, the service delivery method and the number of hours per service per week.
- < Types of IHSS provided without cost or through other resources, including sources and amounts of those services.
- < Unmet need for IHSS.³
- < Beginning date of service authorization. *[MPP 30-761.27]*

³ Unmet need is the difference between the total number of hours for which services are needed and the maximum IHSS hours for that person. For example a person needing 12 hours of IHSS-type services per day and who is assessed at 283 hours has 77 hours per month of unmet needs. (12 hours x 30 days = 360 hours needed per month. 360 hours needed - 283 IHSS hours assessed = 77 hours of unmet need.)

HOW NEED IS RANKED

The counties use a state-issued assessment tool, called Uniformity, for initial assessments and periodic reassessments of functional capacity. The individual is evaluated in the following activities of daily living and given a ranking of 1 (high functioning) to 5 (low functioning) for each: *[W & I Code §12301; 12309; MPP 30-756]*

- | | |
|--------------------------------|--------------------------------|
| < Housework | < Bowel, bladder and menstrual |
| < Laundry | < Repositioning |
| < Shopping and errands | < Eating |
| < Meal preparation and cleanup | < Respiration (a) |
| < Mobility inside | < Memory (b) |
| < Bathing and grooming | < Orientation (b) |
| < Dressing | < Judgment (b) |

(a)(b) These functions have fewer ranks because differing functional ability in these areas does not result in significantly different need for human assistance: *[MPP 30-756.35]*

(a) Respiration is assigned only 2 possible ranks, 1 or 5.

(b) Only 3 possible ranks are assigned to these mental functions, ranks 1, 2 and 5. This scale is used to determine the need for protective supervision. *[MPP 30-756.37]*

Rank 1: Independent: able to perform function without human assistance, although the individual may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his or her safety. A recipient who ranks a "1" in any function will not be authorized that service. *(A rank 1 will be assigned if the person's needs for any function are met entirely with paramedical services. If paramedical services are required, the assessment may include paramedical hours, but they will be listed separately from activities of daily living services.) [MPP 30-756.4; 30-759.17]*

Rank 2: Able to perform a function, but needs verbal assistance, such as reminding, guidance, or encouragement.

Rank 3: Can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.

Rank 4: Can perform a function but only with substantial human assistance.

Rank 5: Cannot perform the function, with or without human assistance.

TIME PER TASK — DOMESTIC AND RELATED SERVICES

State regulations list time guidelines for performing **domestic functions**. Time per task guidelines can be used only if they are appropriate in meeting the individual's particular circumstances. Exceptions to these guidelines are allowed only when necessary to enable the individual to establish and maintain an independent living arrangement and/or remain safely in his/her home. *[W & I Code §12301.2; MPP 30-758]*

Time per task guidelines may not be used for:

- < **Personal care services**
- < **Meal preparation**
- < **Meal cleanup**
- < **Paramedical services** *[MPP 30-758.2]*

The county may establish time per task and frequency guidelines for other services except those listed above. Those established by regulation are:

- < Domestic — not to exceed 6 hours per month per household.
- < Laundry, when the facilities are in the home — not to exceed 1.0 hour per week per household. The provider is expected to accomplish other tasks while clothes are washing and drying.
- < Laundry, when facilities are not in the home — not to exceed 1.5 hours per week per household. It is expected that the provider will use a local Laundromat during nonpeak hours and will use as many machines simultaneously as necessary to be efficient.
- < Food shopping — not to exceed 1.0 hours per week per household.
- < Other shopping/errands — not to exceed 0.5 hours per week per household. *[MPP 30-758]*

MAXIMUM HOURS

Individuals who are eligible for **IHSS (Residual or non-PCSP)** assistance are limited to a maximum of 195 hours of services per month unless they are classified as severely impaired. Those classified as severely impaired may be authorized up to 283 hours per month. *[W & I Code §12300(g)(3); 12303.4; 12304(d); MPP 30-701(s)(1); 30-765.1]*

IHSS (PCSP) has a single maximum of 283 hours regardless of severity of impairment. A non-severely impaired person who is eligible for PCSP and has a documented unmet need other than protective supervision is eligible to receive up to a maximum of 283 hours. Protective supervision hours are not included, since it is not a service of IHSS (PCSP). If protective supervision is needed by a person eligible for PCSP, those hours will be funded by IHSS (non-PCSP). If a non-severely impaired person receiving IHSS (PCSP) later becomes ineligible for the PCSP, hours may be reduced to the Residual level with a maximum not to exceed 195 hours. *[W & I Code §12300(g)(3); 12300(f); 14132.95(g); MPP 30.780.2(b)]*

SHARED LIVING ARRANGEMENTS

When the person lives with a roommate or attendant, the assessment of need for domestic and related services is prorated based on the following guidelines.

[MPP 30-753(h); 30-763.3]

Domestic services and heavy cleaning

- < The living area is divided into areas used solely by the recipient, areas used in common with others, and areas not used by the recipient.
- < No need will be assessed for areas not used by the recipient.
- < Need for services in the common living areas will be prorated to all the housemates.
- < For areas used solely by the recipient, the assessment will be based on the recipient's individual need. [MPP 30-763.31]

Related services

- < When the need is being met in common with those of other housemates, the need will be prorated to all the housemates involved.
- < When the service is not being provided by a housemate, and is being provided separately to the recipient, the assessment is based on the recipient's individual need. [MPP 30-763.32]

Protective supervision

- < The need will be assessed based on the individual's need; except
- < When two or more IHSS recipients live together and both require protective supervision, the need shall be treated as a common need and prorated accordingly.
- < No need exists for protective supervision during periods when a provider is in the home to provide other services. [MPP 30-763.33]

Teaching and demonstration

- < The services will be based on the individual's need.
- < When recipients live together and have a common need, the need shall be met in common when feasible. [MPP 30-763.34]

Transportation, paramedical and personal care services are to be based on individual need. [MPP 30-763.351]

Yard hazard abatement is not assessed except when all housemates fall into one or more of the following:

- < Other IHSS recipients unable to provide such services.
- < Other persons physically or mentally unable to provide such services.
- < Children under the age of 14 years. [MPP 30-763.352]

There are *exceptions* when assessing needs in shared living arrangements. Some are listed below. Check the MPP or ask the county assessment worker for more information about these. [MPP 30-763.4]

- < Able and available spouse. *[W & I Code §12301(a)]*
- < Landlord/Tenant arrangements i.e., services the landlord is obligated to provide and services the tenant is obligated to pay.
- < Recipient moved into a relative's home primarily for the purpose of receiving services.
- < Recipient is under 18 and living with his or her parents — hiring a provider other than parent.
- < Recipient is under 18 and living with his or her parents — parent is the provider.
- < Recipient is a parent living with his/her children who are under 14 years old and who are not eligible or do not need IHSS services.
- < Live-in provider.

MEAL ALLOWANCE

A person who has adequate cooking facilities at home but whose disabilities prevent their use has an option to receive a restaurant meal allowance in lieu of menu planning, meal preparation and meal cleanup. Check with the county IHSS office for the current allowance amount. This allowance is not available if the person already receives a restaurant meal allowance as part of the SSP grant. *(Note: The meal allowance reduces the number of hours of direct services. For example, assume the meal allowance is \$65.00 a month and IHSS pays \$5.75 per hour for services. Divide \$65.00 by \$5.75 to determine how many hours of service the \$65.00 would buy. For this example, using the meal allowance would result in 11.3 fewer hours of IHSS services.)* *[W & I Code §12303.7; MPP 30-757.134; 30-765.13]*

PROTECTIVE SUPERVISION

Since a person requiring this service needs 24-hour observation, it means that IHSS should be assessed at the maximum hours (195 or 283 depending on whether the individual is classified as severely impaired or not). Protective supervision is available for monitoring the behavior of non-self directing, confused, mentally impaired, or mentally ill persons. Protective supervision is available if the social worker determines that a twenty-four hour need exists and whether the recipient can remain safely in his/her own home. Social workers also determine whether the entire twenty-four hour need for protective supervision can be met through a combination of IHSS, alternative resources or a reassurance phone call when feasible or appropriate.

Don't be surprised if the IHSS worker discusses whether out-of-home care is a more appropriate alternative than protective supervision. The CDSS regulations require that this be discussed with the person, or the guardian or conservator because of concerns about whether the person will receive adequate protective supervision for the times that IHSS is not available. Be prepared to discuss how protective supervision will be assured outside of any IHSS hours. *[MPP 30-757.173]*

Often standard questions will be asked and used in the determination. If you feel that these questions do not adequately show the need, be sure to discuss the reasons for

the additional need with the person doing the evaluation. Statements from the person's doctor, counselor, social worker or other health care professional may help explain the need. *[W & I Code §12300(b); MPP 30-756.37; 30-757.17]*

Protective supervision is not available:

- < For friendly visiting or other social activities.
- < When the need is caused by a medical condition and the supervision required is medical. In anticipation of a medical emergency.
- < To prevent or control anti-social or aggressive behavior. *[MPP 30-757.171]*
- < When a provider is in the home to provide other services. For example, If any other provider of services to the person is in the home, IHSS assumes that provider will be responsible for the persons needs during that time and that an IHSS worker providing protective supervision is not required to be there at the same time. *[MPP 30-763.332]*
- < For a minor except as needed because of the functional limitations of the child. This means that protective supervision may be authorized only for activities that are over and above the supervision that would be required for a child without a developmental disability. *[MPP 12300(d)(4)]*

See also the comments in the "Shared Living Arrangements" part of this section. Protective supervision may not be denied based on the presence of a nonprovider housemate in the home. *[MPP 30-763.9]*

ASSESSING A MINOR'S NEED FOR PROTECTIVE SUPERVISION

The California Department of Social Services issued All County Letter (ACL) No. 98-87 to clarify procedures for assessing a minor's need for protective supervision. A copy of this ACL is in the Appendix.

NOTICE OF ACTION

Whenever an IHSS needs assessment or reassessment is completed, the person is to receive a "Notice of Action." The notice must include a description of each task allowed, the number of hours authorized and the difference in hours if they are being changed from those on the last assessment. The "Notice of Action" is to be mailed no later than 30 days following the date the application is completed. *[W & I Code §12300.2; MPP 30-009.236; 30-759.2; 30-759.7; 30-763.8]*

ALTERNATIVE RESOURCES

One of the requirements of the needs assessment is for the county IHSS worker to establish whether there are alternative sources for services available from other agencies or programs for the person. This may include an able and available spouse, parents of a minor, community and school services, and any other agency or generic resource that is available to the person. The IHSS hours will be reduced by any service hours available from an alternative resource.

Services provided by regional centers to their consumers in their own homes can not be considered an alternative resource by IHSS. IHSS hours must be granted as though no services are being provided through a regional center. However, alternative resources from other sources may still be available and be used to reduce IHSS hours.

Supplemental services provided by the regional center must not duplicate IHSS services. *[W & I Code §12301(a); 12309(b)(2); MPP 30-761.273; 30-763.4; 30-763.6; ACL 98-53; 98-79]*

If a person or agency agrees to provide IHSS services voluntarily, the county social services staff will prepare a **voluntary services certification**. This form includes some case information and the services the volunteer will provide, the days and hours per month that services will be provided, social security number (optional), and the volunteer's signature. Signing this form indicates that the provider knows of the right to be paid for the services, but voluntarily chooses not to accept any payment, or accept a reduced payment, for the provision of services. *[MPP 30-757.176; 30-763.64]*

Parents of children who are in the Department of Developmental Services Medicaid Waiver (DDS's Home and Community-based Services Waiver) can be present in the home while services are provided to their child or children by a non-parent provider.

STAFFING & PAYMENT

STAFFING AND PERSONAL CHOICE

A person receiving personal care or paramedical services is not required to accept services from any specific person, except for these individuals recruited by his or her guardian, conservator, or, if a minor, the parents. Preference is to be given to the provider chosen by the individual. *[W & I Code §12304.1; MPP 30-767.3; 30-767.5(a); 30-769.735]*

If service is provided through a nonprofit consortium contracting with a county or by a public authority established by the county, the person retains the right to hire, fire and supervise the work of his or her IHSS provider. *[W & I Code §12301.6(c)(1); 12301.6(h)]*

PCSP PROVIDER ENROLLMENT

All providers of IHSS (PCSP) must sign the PCSP enrollment agreement form. Signing this form means the provider agrees to comply with all laws and regulations governing Medi-Cal. One of these is that the provider agrees to accept the wages paid by the IHSS program as payment in full. *[42 CFR Chap. IV § 447.15; MPP 30-767.5]*

RATE OF PAY

Generally, the rate of pay for an individual provider is the California minimum wage rate, although a county may set a higher rate.

[W & I Code §12300(g)(2); 12301.6(c)(3); 14132.95(j); MPP 30-765.2; 30-765.2]

Payment of a supplement to increase the hourly rate is prohibited for both IHSS (PCSP) and IHSS (Residual):

“Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.”
[W & I Code §12300(g)(2); 14132.95]

“A State plan must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayment required by the plan to be paid by the individual. . . .” *[42 CFR 447.15]*

If the person is receiving the maximum hours, additional help may be hired to provide whatever services are needed by the person, including more IHSS-type services. Persons receiving IHSS hours may often need further assistance in types of services

that are not provided by IHSS. These may be in community services, activities outside of the home, house hunting, learning to ride the bus, facilitating medical appointments, etc. The rate for non-IHSS hours is established by the employer.

PROVIDER BENEFITS

At the end of this section is a copy of a CDSS publication that explains IHSS individual provider benefits. There are deductions from the paycheck for social security, Medicare tax and state disability insurance. These deductions are automatically made by the state payroll agency when services are provided by an individual provider, whether the individual is receiving advance pay or not. The provider also receives unemployment insurance and workers' compensation benefits with no deduction.

[W & I Code §12302.2; MPP 30-769.8]

Income tax withholding is available but not mandatory. The provider must request the county to withhold state and federal taxes from their pay if he or she wants this done. Be sure the provider knows that if they do not request tax withholding, the wages may still have to be reported and taxes paid depending on their income level and/or tax status. *[MPP 30-769.84]*

PAYMENT

An IHSS provider may be paid by one of these ways:

- < From the state by submission of a timesheet to the county IHSS office.
- < Directly from a recipient who receives advance payment.
- < From an agency contracted by the county.
- < From the county as a county employee.

TIMESHEETS

IHSS pays providers twice a month. Pay periods run from the 1st of the month to the 15th, and from the 16th to the end of the month.

Timesheets for individual providers are submitted twice a month, on the 15th of the month and at the end of each month. Payment to the provider is usually made within 10 days. Timesheets that are not appropriately signed and dated will be returned to the recipient which could delay payment to the provider.

Providers for persons receiving *advance payment* must submit a time sheet only at the end of each month. Be sure the timesheet(s) are properly signed and dated, otherwise advance payment could be placed in jeopardy. *[MPP 30-769.737]*

In each case, the recipient is responsible for signing the time sheet and assuring that the hours and services claimed are what was received during that pay period. If the person is unable to sign the timesheet, a person authorized by the recipient can sign

on his/her behalf. Request instructions from the county if someone other than the recipient will be signing the timesheets. Adjustment transactions will be used to make adjustments to tax records when an overpayment, an underpayment, or an incorrect deduction occurs. *[MPP 30-769.7, ACL 98-86]*

ADVANCE PAYMENT

Advance payment is not available to individuals receiving services through the Personal Care Services Program because of federal medicaid law restricting payment in advance of services being provided.

Under the non-PCSP, a person who is assessed as severely impaired has the right to receive advance payment for IHSS services. The county is required to inform, in writing, any potentially eligible person about advance payment. Any amounts advanced will be minus all required employee deductions. After one year of IHSS services, the recipient may choose to receive this payment through electronic transfer.

[W & I Code §12304(a); (c); 12304.3; MPP 30-701(d)(3); 30-753(d)(3); 30-769.73]

The county has a right to stop advance payment to a recipient if the person:

- < is using his or her payment for other than the purchase of authorized services.
- < has not submitted timesheets at the end of each month.
- < has not paid his or her providers timely. *[MPP 30-767.133]*

PROVIDER GRIEVANCE/COMPLAINT PROCESS

The county shall respond to and resolve payment inquiries from recipients and providers. *[MPP 30-769.241(e)]*

For providers of IHSS (PCSP), MPP section 30-767.6 lists the procedures to follow if a provider of personal care services has a grievance or complaint about the processing or payment for services provided.

BACK PAYMENT FOR SERVICES

When IHSS services and hours are authorized, they may be paid back to the date of the initial application. Benefits are payable retroactively for PCSP, but certain restrictions apply. Applicants or beneficiaries may request up to three months Medi-Cal/PCSP coverage prior to the month of application. The IHSS worker must make an assessment that there was a need for PCSP for each month of retroactive coverage requested and retain a statement of necessity from a medical provider on file. There is no similar retroactivity in the IHSS program. IHSS is only retroactive to the date of the application.

However, these payments will only be made to the actual provider of the services, not to the regional center or the supported living agency. If an agency or the regional center has already paid the provider, IHSS will not reimburse those wages.

[MPP 30-759.4; 30-769.73]

REIMBURSEMENT FOR PARENT CARE FOR A CHILD

When IHSS services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child, the provider will receive payment for IHSS only when that person leaves full-time employment or is prevented from obtaining full time employment because no other suitable provider is available, and, if care is not given by that person, the child may be subject to inadequate care or inappropriate placement. Payment is given only for services listed in W & I Code §12300(d). *[W & I Code §12300(d); MPP 30-763.45]*

**WELCOME TO YOUR JOB AS
AN IN-HOME SUPPORTIVE
SERVICES (IHSS)
INDIVIDUAL PROVIDER.**

This notice briefly describes benefits that may be available to you and your income tax responsibilities. Please read this pamphlet carefully. Also, remember that your employer is the IHSS recipient that hired you, not the State of California nor the County Welfare Department (CWD). The State of California issues this pamphlet and your paychecks on behalf of your employer and the CWD handles all the paper work. Please contact the CWD whenever you have any questions about your paycheck or timesheet. Always sign and date your timesheet after the pay period ends (not before), also have your employer sign and date it, then mail your timesheet to the CWD address that appears in the lower right-hand corner of the timesheet to avoid any delay in receiving your paycheck. Remember: always keep the CWD notified of any change to your address and/or telephone number.

My County Service Worker is:

Name _____

Address _____

Phone: _____

County of: _____

For information about IHSS
call the local
county welfare department



STATE OF CALIFORNIA
Gray Davis, Governor
HEALTH AND HUMAN SERVICES AGENCY
Grantland Johnson, Secretary
DEPARTMENT OF SOCIAL SERVICES
Rita Saenz, Director

PUB 104 (6/99)

**IN-HOME
SUPPORTIVE
SERVICES**

**INDIVIDUAL
PROVIDER
BENEFITS
AND
SERVICES
INFORMATION**



CDSS
CALIFORNIA
DEPARTMENT OF
SOCIAL SERVICES

SOCIAL SECURITY:

Social Security benefits are available to individual providers who are 18 years old or older and not the parent of the employer/recipient. The benefits are available if you become totally disabled or retire and meet certain eligibility requirements. There is a deduction from your paycheck for Social Security (FICA). The benefits include monthly retirement or disability payments to you or your dependents. You should contact your local Social Security Administration Office for information and/or to apply for Social Security. The telephone number and address of this office are listed in the white pages of your telephone book under "United States Government, Health and Human Services Department."

MEDICARE TAX

Medicare is the health and medical benefits received as part of the total Social Security benefits package. In the past, the Medicare tax deduction was a part of the Social Security (FICA) tax deduction. Federal law now requires that the tax and the amount deducted be reported separately. Questions regarding the Medicare tax should be directed to the Social Security Administration.

STATE DISABILITY INSURANCE (SDI):

State Disability Insurance benefits are available to you if you become disabled and are prevented from doing your regular work and you meet certain eligibility requirements. There is a deduction from your paycheck for SDI. State Disability Insurance benefits are available for a maximum of 52 weeks. You should contact your local California Employment Development Department (EDD) office for information and/or to apply for State Disability Insurance. The telephone number and address of this office are listed in the white pages of your telephone book under "California State of, Employment Development Department."

INCOME TAX WITHHOLDING:

You may have state and federal income tax withheld from your paycheck if you apply and you meet certain eligibility requirements. Income tax withholding for individual providers is strictly voluntary. If you wish to have state and federal income tax withheld from your paycheck please complete the Income Tax Withholding Form (W-4) and mail it to your county welfare department. If you do not have state and/or federal income tax withheld from your paycheck, you are still required to file a tax return at the end of the year and possibly pay taxes on your earnings. You should contact your employer/recipient's county social service worker if you require additional W-4s, need to change your withholding, or need to determine the status of your withholding. You should contact your local California Franchise Tax Board (FTB) office for information about state income tax withholding. The telephone number and address of this office are listed in the white pages of your telephone book under "California, State of, Employment Development Department."

EARNED INCOME CREDIT (EIC):

You may be eligible for the Earned Income Credit (EIC). To find out about EIC and if you are eligible, carefully read the instructions for completing a form W-5 (Earned Income Credit Advance Payment Certificate). If you are eligible for EIC you can choose to get the credit in advance with your pay instead of waiting until you file your tax return. You should contact your local Internal Revenue Service office or your tax consultant for information about EIC.

If you are the parent, spouse or child of the person you are providing services to you may choose to participate in the SDI program by applying for Elective State Disability Insurance. The forms for Elective SDI coverage are available from the county social services worker. If you want this optional coverage, the cost will be deducted from your paycheck. All other Individual Providers are automatically covered for SDI if they have IHSS quarterly wages in excess of \$750.

UNEMPLOYMENT INSURANCE (UI):

Unemployment Insurance (UI) benefits may be available to you if you are not the parent or spouse of your employer/recipient and become unemployed, able and available to work and you meet certain eligibility requirements. There is no deduction from your paycheck for UI. Unemployment Insurance benefits are available for a maximum of 26 weeks. You should contact your local California Employment Development Department office for information and/or to apply for Unemployment Insurance. The telephone number and address of this office are listed in the white pages of your telephone book under "California, State of, Employment Development Department."

WORKERS' COMPENSATION:

Workers' Compensation benefits are available to you if you are injured on the job or become ill due to your job, and you meet certain eligibility requirements. There is no deduction from your paycheck for Workers' Compensation. If you are injured on the job, you should seek medical attention immediately and then notify your employer/recipient's county social services worker. Claim forms to apply for Workers' Compensation are available from the county social services worker and should be returned to the County Welfare Department when completed. For more information about Workers' Compensation, you may call an Information and Assistance Officer at 1-800-736-7401.

- Remember, you can interview as many people as you wish. You do not have to hire the first person you interview.
- Remember, you can always change your mind—now or later.
- Remember, **YOU** should pick the worker who takes care of **YOU**.
- Remember to call your social service worker immediately, once you hire a worker. If you fire a worker, do the same.

POINTS TO REMEMBER ONCE YOU HAVE HIRED YOUR WORKER

- It is not okay to be treated badly! Do not let your worker mistreat you.
- If your worker is not doing his or her job, call your social service worker.
- If your worker is frequently late, leaves early, or does not report to work, call your social service worker immediately.
- If your worker is hitting you, hurting you, screaming and yelling at you, or treating you badly in any way, call your social service worker immediately.

DOS AND DON'Ts

- **DO** ask for a receipt any time your worker shops for you.
- **DO** call your adult protective services agency or police department if you feel you are in danger.
- **DO NOT** talk about how much money you have with the worker. **DO NOT** talk about your valuable property items and cash.
- **DO NOT** let your worker sign **YOUR** name on their timesheet.

- **DO NOT** sign your worker's time sheet if you know they have not worked those hours. Call your social service worker.
- **DO NOT** add your worker's name to your savings, checking, charge accounts, or any other documents.
- **DO NOT** add your worker's name to your SSI, pension, Social Security or any other check.

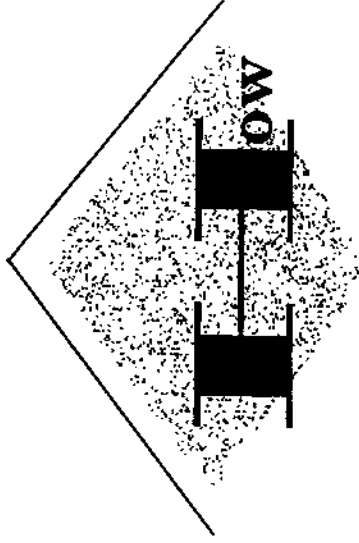
IMPORTANT TELEPHONE NUMBERS

Provider / Worker _____
 Social Service Worker _____
 Emergency _____
 Police _____
 Adult Protective Services _____
 Doctor _____
 Friend or Relative _____



STATE OF CALIFORNIA
 Gray Davis, Governor
 HEALTH AND HUMAN SERVICES AGENCY
 Grantland Johnson, Secretary
 DEPARTMENT OF SOCIAL SERVICES
 Rita Saenz, Director

STATE SOCIAL SERVICES ADVISORY BOARD,
 COMMITTEE ON WELFARE AND SOCIAL SERVICES



To Hire And Supervise Your In-Home Supportive Services (IHSS) Provider

A Brochure For Clients

This brochure is intended to provide some guidelines for hiring and supervising your In-Home Supportive Services worker or provider.

ANSWERS TO YOUR QUESTIONS

The following are some of the services that may be available to you through the In-Home Supportive Services Program:

- Household and heavy cleaning, meal preparation, laundry, reasonable shopping and errands.
- Personal care services, such as feeding, bathing, bowel and bladder care, dressing, and other services.
- Assistance with transportation for medical appointments and health related services.

Please check your NOTICE OF ACTION for a complete list of services authorized for you.

The In-Home Supportive Services (IHSS) Program provides assistance to eligible aged, blind, and disabled persons who are unable to remain safely in their own homes without assistance. While your social service worker has the responsibility to assist you in looking for a worker to help, you should make the final choice on who to hire and when to terminate services. The following suggestions can assist you in carefully choosing your worker.

WHO ARE YOU HIRING?

It is important that you talk to the worker in person before deciding to hire him or her. You might want to consider the following:

- Have a friend or relative sit in on the interview.

- You may ask to see an identification card with a picture of the worker on it. A driver's license, a Department of Motor Vehicles ID Card, an Alien Registration card, or a County Employment ID card are all examples of such cards.

- Write down the worker's name, birth date, and Social Security account number. Keep this information in a place where you can easily find it. Write down their address and their telephone number. Your social service worker will need this information if you hire this person.

- Find out where they live, and where and when they last worked. Ask for references from people they have worked for. You may call and ask what kind of work they performed, and if there were any problems with the worker.

- Ask if the worker lives in the area and how long they have lived there. This will give you an idea of whether the worker is familiar with the local facilities or if the worker needs a lot of help from you to learn the area. Ask a new worker why he or she moved to this locality.

- Ask if the worker uses alcohol, tobacco, or drugs.

- Look at the worker's appearance. Is the worker neat and clean? If this worker will be cooking meals for you, take a good look at the worker's hands and fingernails and make sure they are clean.

CAN THE WORKER DO THE JOB?

It is not easy to show a worker how to do things all the time, especially when you do not have the energy to explain what it is that has to be done.

The following questions or observations may be noted before you hire — get the following information from the worker during your talk:

- Previous work—Has the worker done this kind of job before?
- Knowledge of job duties—Does the worker know what the job is about? Has the worker attended any job training? Ask direct questions about doing the job. Talk to the worker about what jobs you need done, such as cooking, laundry, cleaning, bathing, and shopping. If you need transportation, be sure to see that the worker has a valid driver's license and insurance policy.
- Good health—Make sure the worker does not have physical problems that would keep the worker from taking good care of you.
- Working hours—What hours is the worker able to care for you? Does the worker have any other part-time jobs?

SHALL I HIRE THIS WORKER?

Trust your feelings! Making the right choice is not always easy.

- Remember to ask all the questions you want. If in doubt about anything, continue to ask more questions of the worker, the social service worker or the person who told you about the worker.
- Remember to write down things. If anything the worker said sounded odd to you, you can check it out with your social service worker. Remember to write it down so you do not forget.

CRIMINAL RECORDS CHECK FOR IHSS PROVIDERS

A recipient has the option to request that his/her IHSS provider be fingerprinted for a criminal background check. The Department of Justice will report whether the person has been convicted within the last 10 years of a sex offense against a minor, a violation of Penal code sections 243.4 (sexual battery), 273a (assault of child under 8 resulting in death), 273d (child abuse), or 360(a) or (b) (crimes against elders and dependent adults), theft, robbery, burglary, or any felony. However, all costs must be paid by the recipient. [W & I Code §15660]

Fingerprints may be taken at a local law enforcement agency, a private agency, or any other agency that is designated by the county welfare department to take fingerprints. The fee for rolling the fingerprints is approximately \$10 - \$16 dollars. The fingerprint card is provided by the agency. The "reason for being fingerprinted" box on the card must state "Elder Care Certification per W & I Code section 15660." The consumer's name and address must be placed in the "employer" box on the fingerprint card.

Then the fingerprint card and a \$52.00 check or money order payable to the "Department of Justice" is mailed to:

Department of Justice
Bureau of Criminal Identification
PO Box 903417
Sacramento, CA 94203-4170

The Department of Justice will return the results of the fingerprint check to the recipient within 30 days. It is important to remember that information received through the fingerprint check is confidential and is not to be shared with others.
[W & I Code §15660]

MANDATED REPORTER

The county IHSS office has responsibility to notify IHSS providers of this requirement, however, you may also want to be sure that the provider is aware of this requirement.

Any person who provides care or services for elders or dependent adults, (whether or not that person receives compensation), is a mandated reporter. The language "any person," which includes IHSS providers, became effective January 1, 1999. Any actual or suspected abuse must be reported to the county Adult Protective Services (APS) agency.

Abuse includes physical abuse, neglect, financial abuse, abandonment, isolation, abduction or other treatment with resulting physical harm or pain or mental suffering, and the deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering. The criminal penalty for failure to report is up to a year in county jail and a fine of up to \$5,000. [W & I Code §15610.17, 15610.30, 15610.07]

REASSESSMENT / REVIEW

A reassessment is a review of past assessments and the current situation of the person. It may be requested by the recipient, service provider, regional center, family member, or other entity. A reassessment will also be done if the county receives information that the situation of the person has changed.

If the person's situation has changed or shows a need for more or fewer IHSS services than authorized and he or she is not receiving the maximum IHSS hours (195 or 283), document the need and request a reassessment. See the *Assessment Section* for help with this. Also, when there is a misunderstanding or dissatisfaction with an action or inaction by a county affecting an application for or receipt of public social services, a review/reassessment may be requested.

When a reassessment is done, the recipient will receive a Notice of Action showing the increased or decreased number of hours and the difference from previous hours authorized.

The CDSS encourages the county to resolve differences with this informal process and requires the county to specifically designate staff to be responsible for requests for review. **Using this county review/reassessment process does not extend the time limits for filing for a state hearing.** [W & I Code §12300.2; MPP 22-009; 22-073.23; 30-002(r)(1); 30-002(s)(6)(H)]

APPEAL / STATE HEARING

This section provides information about appealing IHSS decisions about eligibility and services. It is NOT intended to take the place of legal advice. We provide references to regulations that may apply to the most typical appeals. If you are not sure what applies or how it applies to an individual case, you may want to seek legal advice or help from someone with expertise in handling these matters. See “*Who Can Help*” at the end of this section for some suggestions.

Regulations that guide the state hearing process for the Department of Social Services (including IHSS) are contained in the California Department of Social Services' *Manual of Policies and Procedures, Confidentiality, Fraud, Civil Rights, and State Hearings* publication. The hearing regulations start with Division 22. You may review these sections at the county welfare office. A copy of specific sections may be requested from them to help determine whether a state hearing should be requested or to prepare for a state hearing. They are also available on the California Department of Social Services Internet site at www.dss.cahwnet.gov/getinfo/regintro.html; then choose *Online CDSS Manual of Policies and Procedures*, then *Div. 22*. Some larger libraries may have a copy of the MPP, or you can order a complete printed copy. See *Documents Referenced in This Guide* page in the Appendix for ordering information. [MPP 22-051.3]

The California Department of Social Services Web site also contains information about the hearing process at <http://www.dss.cahwnet.gov/shd.htm>.

Informal resolution is preferred and encouraged by the state and county. However, it is important to remember that **working to resolve issues informally does not change the strict timelines for filing a request for appeal**. If an appeal is filed and the issues are then worked out informally before the hearing, the hearing process can be stopped.

ADDITIONAL TERMS USED IN THIS SECTION

An **Administrative Law Judge (ALJ)** is a person designated by the Director of the California Department of Social Services and assigned by the Chief Administrative Law Judge to conduct state hearings. [MPP 22-001(a)(2)]

The term **complainant** is used throughout the Manual of Policy and Procedures and is used synonymously with recipient, person, or individual throughout this section. A complainant is the person who has requested a state hearing and is or has been an applicant for or recipient of IHSS. Reference to the complainant also includes the authorized representative, when appropriate. [MPP 22-001(c)(2)]

County or CWD refers to the county welfare department. Some counties may use terms other than welfare such as social services or human services. [MPP 22-001(c)(4)]

Director refers to the director of the California State Department of Social Services (CDSS). [MPP 22-001(d)(4)]

NOTICE OF ACTION TO DENY OR CHANGE BENEFITS

If the county denies or intends to change a person's IHSS services, it must give a written notice to that person. The notice must include the following:

- < The action the county intends to take,
- < The reasons for that action,
- < The specific regulations supporting the action,
- < An explanation of the right to request a hearing, and, if appropriate,
- < The circumstances under which aid will be continued if a hearing is requested.

Except in limited circumstances, the notice of action must be mailed to the complainant at least 10 days before the effective date of the action. The 10 days does not include the date of mailing or the date that the action is to take effect. [MPP 22-001(a)(1); 22-001(t); 22-071; 22-072; 30-009.236]

Reasons when a timely notice is not required include the death of the recipient or admission to an institution, intermediate care facility or a skilled nursing facility. [MPP 22-072.2]

WHAT CAN BE APPEALED?

A state hearing is available to a person who is dissatisfied with a county action and who requests a hearing in the required manner. [MPP 22-003]

There are some instances where a hearing will not be granted or will be dismissed. Some of these are:

- < When a state or federal law requires an automatic adjustment for all persons receiving that service, *unless* the reason for the request is that the amount was figured incorrectly. This applies if the change affects all people receiving IHSS services and everyone's benefits are automatically adjusted in the same way because of a change in law. [MPP 22-003.12; 22-054.1]
- < Complaints of discourteous treatment by a county employee when that treatment did not result in any denial, delay, discontinuance or reduction in aid or services. [MPP 22-003.15]
- < When the request for hearing is filed after the time limit set in regulation. [MPP 22-054.32]
- < When the identical issue has been the subject of a previous state hearing involving the same person. [MPP 22-054.34]

- < If the request is because the county has not complied with a previously adopted state hearing decision. There is another way to handle this issue that is discussed in the *After the Hearing* section. [MPP 22-054.37; 22-078.31]
- < The request is withdrawn or abandoned. [MPP 22-054.2]
- < If a state hearing does not have jurisdiction. [MPP 22-049.53; 22-054.31]
- < If the ALJ determines at the hearing that the complainant or authorized representative is unwilling to present his/her case. [MPP 22-054.33]

SHOULD AN APPEAL BE FILED?

To determine whether you should file an appeal you should research the law, regulations and the reason for the county's decision. Ask for help if there is anything you do not understand about the county's decision or the appeal process, refer to *Who Can Help?* at the end of this section. A basic question to ask is: Is the county decision appropriate, and, if not, are there laws, regulations, medical records, etc., to support the appeal?

TIMELINES FOR APPEAL

If the person is already receiving IHSS services, **file the request for appeal during the 10 calendar days BEFORE the Notice of Action is effective.** If the request is filed within this 10-day period, the benefits will not change until there is a hearing and a decision issued. (See Aid Paid Pending section.) [MPP 22-072.5]

A request for hearing **MUST** be filed within **90 calendar days** after the date of the county action or inaction. However, if the request is filed after the 10-day period mentioned above, the benefits will NOT continue pending the hearing. In this case, if the decision is for the recipient, the judge may order back payment. The date of action is the date the notice of action was mailed by the county. [MPP 22-001(f); 22-009.1]

A written request for a rehearing must be filed within **30 calendar days of receipt** after the decision is received. If a rehearing is requested by the county, the recipient has **5 calendar days from receipt** of the notice to file a written response with the Director either supporting or opposing the hearing request. [MPP 22-065]

If a letter is received by the complainant or authorized representative stating that the request will be dismissed because of no jurisdiction, filing after the deadline or because the issue is a matter of compliance with a prior state hearing, the complainant has until the **effective date of the dismissal** to submit further information on why it should not be dismissed. The notice is mailed by the Chief ALJ, or someone designated by him or her, 15 days before the effective date. [MPP 22-054.4]

WHO FILES THE APPEAL?

The recipient, an authorized representative on behalf of that individual, or:

- C A guardian or conservator of an adult.
- C The caretaker relative of a child.
- C The sponsor of an alien.
- C A representative of the estate of a deceased recipient.

A group of individuals with a common complaint may request a group hearing to be scheduled. *[MPP 22-001(2); 22-004.4; .5; 22-047]*

AUTHORIZED REPRESENTATIVE

The CDSS defines an authorized representative as an individual or organization that has been authorized by the individual or designated by the ALJ to act for him or her in any and all aspects of the state hearing. An authorized representative may include legal counsel, a relative, friend or other person. *[MPP 22-001(a)(5); 30-002(r)(3)]*

The authorization must be written, signed and dated on or after the date of the county action. The statement must state that the person is authorized to represent the recipient at the hearing. *[MPP 22-085.1]*

When a person has an authorized representative, the representative must be given a copy of all notices and decisions concerning the state hearing that are provided to the recipient. This means that the recipient or representative must notify the county of the authorization and keep them informed of any change of address. *[MPP 22-054.222(a)(1); 22-085.3; .4]*

WHERE TO FILE THE APPEAL

A request for a state hearing may be written or oral. There is a request form on the back of the Notice of Action. However, a form is not required and the request may be by letter or another written format. If the form on back of the Notice of Action is used be sure to keep a copy of the entire form (front and back). If asked, the county must furnish a duplicate copy of the Notice of Action if the back of that form is used to request a hearing *[MPP 22-004; 22-071.5]*

The written request is filed with the CWD. The address is on the Notice of Action form with the information about the right to request a hearing. For record keeping purposes, it is best to file a written request. *[MPP 22-004.2]*

An oral request is filed in person with the CWD or by telephone at the California Department of Social Services in Sacramento. The toll-free number is 1(800) 952-5253 or TDD 1(800) 952-8349. *[MPP 22-004.3]*

FILING THE APPEAL

The request for a state hearing should include the following information:

- < The aid program involved, i.e., IHSS.
- < The reason for the disagreement with the county action.
- < If an interpreter is needed and what kind, i.e., language, sign, etc.
- < A copy of the applicable Notice of Action. [MPP 22-004.212]

The county welfare office is required to assist with the filing of the appeal if help is requested. In addition, the county is to provide any and all information which can be of assistance to the complainant in preparing for the hearing. This includes revealing any and all regulations and evidence including that which might be favorable to the complainant's case. If the complainant is not fluent in English an explanation of the hearing process must be made in the complainant's language. [MPP 22-004.212; 22-073.232(c)]

Remember to keep the county informed of any change of address during the appeal process so notices for the hearing are received. *And, remember the deadlines for filing.*

AID PAID PENDING

Except under limited conditions, when a timely request for a state hearing is filed within the 10 calendar days before the notice of action is effective, IHSS will continue at the same level the person would have received if the county had not taken the action. This aid paid pending the decision is not to be considered an overpayment even if the decision is in favor of the county. [MPP 22-072; 22-073; 30-768.111]

If adequate notice was NOT given to the recipient as required and aid was discontinued, suspended, canceled, terminated or reduced then the CWD must reinstate the benefits retroactively. [MPP 22-049.523]

Aid paid pending will stop when:

- < The complainant withdraws or abandons the request for a state hearing. If the withdrawal is conditional (see *Conditional Withdrawal from Hearing*) and the hearing is reinstated, aid paid pending will be reinstated retroactively.
- < The claim is denied or dismissed by the preliminary hearing process (see *Preliminary Hearing*).
- < The ALJ determines, based on the hearing record, that the issue involved is one of law or change in law and not one of incorrect application of law.
- < The complainant voluntarily and knowingly, in writing, waives the continuation of aid.
- < A preliminary hearing by the county results in denial or dismissal of a claim.

- < The complainant is granted a postponement of the hearing by the ALJ for a reason that does not constitute good cause. [MPP 22-053.15; 22-054.222(b); 22-072.7; 22-074.3]

If there is a disagreement with the aid paid pending decision, the complainant or the county may submit a written request for reconsideration within ten days from receipt of the decision to the Administrative Adjudications Division. [MPP 22-072.8]

WHAT HAPPENS NEXT

If a written request is filed with the county welfare office, they send a copy to the Administrative Adjudications Division in Sacramento within 3 days. The Adjudications Division is the office that is responsible for setting up the hearing date and holding the hearing. That office then mails a written acknowledgment to the complainant. The regulations do not state a time period for the mailing of the acknowledgment, but it is usually within 2 - 5 days of receipt of the hearing request by the Adjudications Division office. [MPP 22-004.22; 22-043]

Begin to prepare for the hearing as soon as the request is filed. Do not wait until the notice of hearing date is received. There are many questions to be answered which may include:

- < Is help needed to assist in the appeal process?
- < Is an attorney needed?
- < What laws or regulations support the county position?
- < What laws or regulations support the complainant's position?
- < What documents need to be reviewed and/or presented at the hearing?
- < What copies of documents, laws or regulations need to be requested from the county?
- < Will witnesses be needed?
- < Will any witnesses need to be subpoenaed?
- < Are special accommodations needed for the complainant or witnesses?
- < Etc.

The Administrative Adjudications Division must mail or deliver to the complainant and the county a written notice of the time and place of the hearing not less than ten days prior to the hearing. The complainant may waive the 10-day requirement and accept a shorter time period. [MPP 22-045.3]

SUBPOENA

The ALJ or official designee may issue a subpoena upon request of the complainant or county to require the presence of any witness whose testimony has been shown to be relevant. A subpoena duces tecum may be issued to require certain books, papers, correspondence, memoranda or other records be produced for the hearing. It's the responsibility of the party requesting the subpoena to have it served. [MPP 22-051.4; .5; .6]

WITNESS FEES AND MILEAGE

A witness subpoenaed at the request of the complainant and who appears at the hearing may demand payment for witness fees and mileage from the Department on a form specified for that reason. A witness subpoenaed by the county submits the fees on a form specified by the county. The amount to be paid is specified by California Government Code Section 68093. The current witness fee is \$35.00 per day and round trip mileage at \$.20 per mile. *[MPP 22-052]*

The claim form for these fees is often part of the subpoena document. The claim for fees and mileage may be presented to the ALJ at the time of the hearing or mailed within 10 calendar days after the hearing to the address on the form.

EXAMINATION OF RECORDS

Upon request, the County Welfare Department (CWD) must allow the complainant to examine the case record during regular working hours. The complainant has this right both prior to and during the hearing. *[MPP 22-051.1; .2]*

Also, upon request, the county is required to give copies of specific policy materials, including regulations, necessary for the complainant or his/her authorized representative to determine whether a state hearing should be requested or to prepare for a state hearing. These copies must be without charge or at a charge related to the cost of reproduction. *[MPP 22-051.3]*

COUNTY POSITION STATEMENT

Before the hearing the CWD is required to prepare a typewritten position statement. The position statement summarizes the facts of the case and the regulatory justification for the CWD action. It also includes copies of documentary evidence and a list of witnesses which the county intends to use during the hearing.

If the county received a 10-day prior notice of the date and time of the hearing, it is required to make a copy of the position statement available to the complainant at the CWD not less than two working days before the hearing date. It's important to review the position statement in order to be sure that you are prepared to respond to all issues that will be raised by the county. There may be more research to do, so don't wait until the last minute! *[MPP 22-073.25]*

CONDITIONAL WITHDRAWAL FROM HEARING

If an agreement to do a redetermination of benefits is reached between the complainant and the county before the scheduled hearing, the request for hearing may be conditionally withdrawn. The conditional withdrawal agreement must be in writing and signed by both the county and the complainant. The agreement is required to provide

that the actions of both parties will be completed within 30 days from the date the agreement is signed by both parties and received by the county.

[MPP 22-054.211(b)(3)]

Once the county does the redetermination, it is required to issue a notice of determination and give adequate notice to the complainant before the action is to take place. If the complainant disagrees with the redetermination, he or she may request that the hearing be reinstated. The same timelines for the reinstatement request apply as for the original hearing request (see *Timelines for Appeal*). [MPP 22-009; 22-054.211(b)(3); 22-071.14; 22-072.5]

WHO CAN ATTEND THE HEARING

Attendance is usually limited to the complainant, authorized representative, county representative, legal counsel, authorized interpreter and witnesses relevant to the issue. The complainant or an authorized representative is required to attend the hearing unless it is a rehearing or further hearing. [MPP 22-049.1]

Other persons may attend the hearing if the complainant agrees to or requests their presence *and* the ALJ determines that their presence will not be adverse to the hearing. [MPP 22-049.1]

The ALJ can require a witness to wait outside the hearing room during the testimony of other witnesses. [MPP 22-049.12]

INTERPRETERS

If requested before the hearing, an interpreter will be provided by the state. The ALJ may also require an interpreter if, at the hearing, he or she determines that an interpreter is necessary. [MPP 22-049.6]

The ALJ determines if the interpreter is qualified through certification by the California Department of Social Services or by otherwise examining the qualifications and competency of the interpreter. The ALJ has the discretion to disqualify interpreters who are:

- < Complainant's relatives, friends, or an authorized representative;
- < County staff who participated in making the decision complained of;
- < The county appeals representative;
- < Any other person determined by the ALJ to be detrimental to the hearing process or having a bias or the appearance of being biased. [MPP 22-049.6]

THE HEARING

The hearing is required to be held in California in the county in which the complainant *is living at the time of the hearing* and at a reasonable time, date and place. [MPP 22-045.1; .2]

If the complainant is unable to attend the hearing at the hearing location because of poor health, the hearing will be held in the complainant's home or in another place agreed to by the county and the complainant. Verification may be required from the complainant as to why he or she cannot attend the hearing at the hearing location. A hearing may also be conducted by telephone or video conference instead of an in-person hearing if the complainant agrees. [MPP 22-045.1]

The hearing is to be conducted in an impartial manner with all testimony submitted under oath, affirmation, or penalty of perjury. It will be tape recorded or otherwise recorded. [MPP 22-049.2; .3; .4]

The issues are to be limited to those which are reasonably related to the request for hearing. If other issues are going to be brought up, both the CWD and the complainant are required to agree before or at the hearing. [MPP 22-049.5]

If the complainant received adequate notice and is still not ready to discuss the issues, the case will be dismissed. If the complainant did not receive adequate notice, the ALJ must postpone the hearing unless the complainant waives the adequate notice requirement. [MPP 22-049.52]

During the hearing both sides have the right to examine parties and witnesses, conduct cross-examination, introduce exhibits, bring witnesses, examine documents prior to and during the hearing, question opposing witnesses and parties on relevant matters even if not covered in the direct examination, make oral or written argument; and rebut the evidence. [MPP 22-049.7]

A copy of all documents submitted by either the complainant or the county at the hearing is required to be made available to both parties. Be sure to have copies of all the complainant's documents for the CWD. The CWD is required to provide copies of all documents to the complainant free of charge. [MPP 22-049.8]

Failure to appear at the hearing will cause the case to be dismissed unless the complainant requests that the hearing request be reinstated and establishes good cause for failing to appear (*See Postponements.*) as scheduled within 10 days from the scheduled hearing date. [MPP 22-054.222]

EVIDENCE

It is the complainant's and authorized representative's job to be sure that all evidence is produced for the hearing record. The rules of evidence for state hearings are not the same as the rules in judicial proceedings. In general, the rules for state hearings are less restrictive. [MPP 22-050.2]

The ALJ may take "official notice" of facts and propositions that can be readily determined to be accurate by using sources of reasonably indisputable accuracy. This means that the ALJ may accept the existence and truth that certain facts exist without requiring the actual production of evidence to prove those facts. [MPP 22-050.4]

POSTPONEMENTS

Postponements are granted under limited conditions. The ALJ may postpone a hearing at any time before the hearing or at the request of the county at the hearing. Reasons that establish *good cause* for a postponement by the complainant include:

- < Death in the family.
- < Personal illness or injury.
- < Sudden and unexpected emergencies which prevent the complainant or the authorized representative from appearing.
- < A conflicting court appearance which cannot be postponed.
- < When the county, when required, does not make a position statement available to the complainant not less than two working days before the date of the scheduled hearing.
- < When the county has modified the position statement after providing the statement to the complainant AND the complainant waives the 90-day period within which a decision must be issued. [MPP 22-053.1; 14; 16; 22-073.253]

Failure of the complainant or authorized representative to receive the hearing notice is not good cause IF the reason is because the CWD or CDSS was not notified of a change of address. [MPP 22-054.222(a)(1)]

“Aid paid pending” usually continues when there is a postponement of the hearing. However, if it is due to the absence of the complainant, and good cause is not established, or the postponement was caused by an act or omission of the complainant, “aid paid pending” will stop. [MPP 22-053.14; .15]

When a hearing is postponed, continued or reopened at the complainants request, the 90-day period within which a decision is required will be extended, not to exceed 30 days each. If this is done, the complainant must be given a written notice that explains that the time for rendering a decision will be extended. [MPP 22-053.3]

CONTINUANCES FOR ADDITIONAL EVIDENCE

A continuance to receive additional evidence into the record may be granted under limited conditions. If the ALJ determines that evidence not available at the hearing is necessary for the proper determination of the case, the ALJ has the authority to continue the hearing to a later date or close the hearing and hold the record open for a period not to exceed 30 days. [MPP 22-053.2]

When a hearing is postponed, continued or reopened at the complainants request, the 90-day period within which a decision is required will be extended, not to exceed 30 days for each postponement, continuance, etc. If this is done, the complainant must be given a written notice that explains that the time for rendering a decision will be extended. [MPP 22-053.3]

DISQUALIFICATION OF AN ALJ

An ALJ is required to voluntarily disqualify himself or herself and withdraw from any proceedings in which he/she cannot give a fair and impartial hearing or in which he/she has an interest. The complainant or the county may also request that an ALJ be disqualified for the same reasons. This request is required before the close of the record. *[MPP 22-055]*

COMMUNICATIONS AFTER THE HEARING

Oral or written communications to the CDSS after the hearing will not be included in the case record or used in making a decision. Evidence requested by the ALJ at the hearing and for which the record is being held open may be submitted within the deadline set by the ALJ. The ALJ may also reopen the record to receive additional information under certain conditions. *[MPP 22-059.1]*

DISPOSITION OF STATE HEARINGS

All state hearings must be decided or dismissed within 90 days from the date of the complainant's request for the state hearing unless the complainant waives the requirement or withdraws or abandons the request. If the complainant has conditionally withdrawn an appeal, the 90 day period is extended from the date the request for hearing is reinstated. *[MPP 22-060]*

THE DECISION

It is the complainant's and authorized representative's job to be sure that all evidence is produced for the hearing record. The decision will be based **only** on the testimony and exhibits from the hearing record and all papers and the request for hearing filed in the hearing proceedings. The ALJ must specify the reasons for the decision and identify the supporting evidence and records. *[MPP 22-061.5]*

After the hearing is closed, the ALJ either submits a proposed decision for review by the Chief ALJ and the CDSS director or, if authorized by the CDSS director, adopts a final decision. If the ALJ has the authority to adopt a final decision, it becomes final when the ALJ signs and dates it. A proposed decision is not effective unless it is adopted by the director or the director takes no action within 30 days of receipt of the proposed decision. *[MPP 22-001(p)(2); 22-061.1; .4]*

When the decision goes to the CDSS director, he or she must:

- < Adopt the entire decision as it is written; or
- < Decide the matter based on the record, including the transcript, with or without taking additional evidence and issue an alternative decision; or
- < Order a further hearing to be conducted. *[MPP 22-062.1]*

An alternate decision is one issued by the Director that is different than the proposed decision. The director must act within 30 days of receipt of the proposed decision or the proposed decision becomes final. *[MPP 22-001(a)(4); 22-062.2]*

After the proposed or final decision is adopted or an alternate decision is issued by the Director, a copy is mailed to the complainant and to the county. If the director adopts an alternative decision, the proposed decision must be included with the final decision.

The notice of decision will also include information about the right to a judicial review, any rehearing rights and the right to attorney's fee and the cost of the suit if a judicial court finds in the complainant's favor. *[MPP 22-062.3; 22-063]*

Records of the hearing are available to the complainant and county during normal working hours at the Administrative Adjudications Division or other mutually agreed-upon location for three years after the date of the decision. *[MPP 22-064]*

REHEARING

Either the complainant or county may file a request for a rehearing. That request must be filed in writing with the Office of the Administrative Adjudications Division not more than 30 calendar days after the receipt of the hearing decision. There is no particular form required to file for a rehearing. *[MPP 22-065.1]*

If the request for a rehearing is to present additional evidence it must include the following:

- < The date the decision was received.
 - < A description of the additional evidence;
 - < Why it was not previously introduced;
 - < Why it is important to the case; and
 - < How this additional evidence will change the outcome of the hearing decision.
- [MPP 22-065.12; .13]*

The director will mail a copy of the rehearing request to the other party of the hearing. That party has 5 calendar days to file a written response with the Director either supporting or opposing the rehearing request. *[MPP 22-065.2]*

The director must grant or deny the request no earlier than 5 nor later than 15 working days after it is received by the Chief ALJ. If the director does not act within this period, the request will be considered denied. *[MPP 22-065.3]*

If a rehearing is granted the director will:

- < Order reconsideration of the decision based on the evidence in the record and any new evidence presented by either side. Any new evidence will be given to the other party for rebuttal.
 - < Order a new hearing on one or more of the issues presented at the original hearing.
- [MPP 22-065.4]*

The decision of the director issued based on the rehearing is not subject to further state hearing. There is still a right to a judicial review whether or not the rehearing is granted. The next step above the director is filing with the Superior Court that has jurisdiction in your area. It is best to get legal advice before making this decision. [MPP 22-065.6; .7]

COMPLIANCE WITH THE DECISION

As soon as the county receives the decision, it must start action to comply with the decision, even if a rehearing is requested. [MPP 22-078.1]

If the decision is wholly or partially in favor of the complainant, the county must report to the Administrative Adjudications Division within 30 days on how they have complied or are complying with the order of the decision. [MPP 22-078.2]

When the CDSS receives the county compliance report, it determines whether or not the compliance is appropriate. It then notifies the county and the complainant whether or not the compliance is approved. If compliance is not approved, the county is given instructions on how to ensure proper compliance. [MPP 22-078.6]

The complainant may contact the California Department of Social Services, orally or in writing, if he or she is dissatisfied with the compliance. The CDSS will take appropriate action to ensure compliance with the decision. [MPP 22-078.3; .4]

Another hearing may be requested only if there are still issues that were not resolved in the prior state hearing or that resulted from the prior hearing requiring the county to make further determinations regarding the complainant's eligibility or amount of benefits. The timelines for filing this request for hearing are the same as for the original hearing (see *Timelines for Appeal*). This deadline is not extended just because the CDSS is reviewing the compliance. Non-compliance alone does not give the right to another hearing. [MPP 22-078.31; .5]

PRELIMINARY HEARING

There are circumstances when a county may hold a preliminary hearing at the county level before the state hearing. In order to hold a preliminary hearing the county must have prior written approval of the Administrative Adjudications Division. If the CWD has this approval, it must hold a preliminary hearing for all state hearing requests concerning actions by that county. For more information about preliminary hearings see MPP 22-074 to 22-076.

WHO CAN HELP?

- < **County Department of Social Services (County Welfare Department, CWD).**
When asked, the CWD is required to assist with the filing of the appeal and will provide all information that can be of assistance in preparing for the hearing. Also upon request they furnish copies of the relevant documents, sections of laws, regulations, etc. They will also explain the hearing process in the person's language when the person is not fluent in English.
- < **Independent Living Centers.** Independent Living Centers (ILC) are nonprofit agencies that receive funding through the Department of Rehabilitation to provide consultation, training, information and referral on housing, advocacy and accessibility. A list of ILCs is available from the Department of Rehabilitation, Independent Living Section, 3000 Evergreen Street, Sacramento, CA 95815. Telephone voice mail: (916) 263-8944. Or you can see the list on the Internet by choosing "Independent Living Services" at: www.rehab.cahwnet.gov.
- < The California Department of Social Services Web site contains a list of **Authorized Representatives** at www.dss.cahwnet.gov/shd/default.htm. This site lists over 250 organizations in California that will help people having problems with public assistance (including IHSS). They also have information on the hearing process at www.dss.cahwnet.gov/shd/hearings.
- < **Protection and Advocacy, Inc.** Toll free (800) 776-5746.
A document titled *IHSS Fair Hearing and Self-assessment Packet* is available from Protection and Advocacy, Inc..
- < Private attorney. When looking for a private attorney, ask if the person has experience with administrative law and the fair hearing process.
- < Is an attorney needed? That is up to you. An attorney is not required, however, sometimes there are complex issues involved that may require an attorney's help.

Additional help for **Regional Center** consumers only:

- < **Regional center.** Contact your case manager. He or she may help or refer you to another person who has more experience with state fair hearings within the regional center.
- < **Area Board.** Ask the regional center for the address and telephone number of the Area Board serving your area.
- < **Supported living services agency.** For persons receiving supported living services, the agency who provides those supports may be able to help with representation or find someone else who can help.

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DOCUMENTS REFERENCED IN THIS GUIDE

Documents referenced within *What About IHSS?* are available from the following sources.

- C County social services offices are required to have a copy of the **social services laws** (W & I Code), **All County Letters** (ACL), **Manual of Policy and Procedures** (MPP – social services regulations) and other related materials available for the public to view. (*Operations Manual 17-017*)
- C **Welfare and Institutions Code** (W & I Code) This code consists of volumes of laws on a large variety of subjects with a relatively small portion for IHSS. The county welfare department, some regional centers and large libraries have law books for reference or contact a public law library in your area.
- C **All California laws**, including the W & I Code, are available on the Internet at www.leginfo.ca.gov. Choose “California Law,” then “Welfare and Institutions Code.” Most IHSS related laws are in Sections 12300 et seq. and Sections 14000 et seq. This web site is maintained by the California Legislative Counsel and is the most up-to-date source.
- C **Manual of Policies and Procedures** (MPP) These contain the regulations established by the California Department of Social Services for its various programs. CDSS Manuals of Policy and Procedures are available on the Internet at www.dss.cahwnet.gov/getinfo/regintro.html. See Division 30 for IHSS and Division 22 for fair hearing regulations. Or, send a written or faxed request for the manuals to:

CDSS Warehouse FAX: (916) 371-3518
 P.O. Box 980788
 West Sacramento, CA

Indicate which manual(s) you want to receive:

- C IHSS Policies and Procedures: *Social Service Standards Manual, Division 30*
- C Fair Hearings: *Confidentiality, Fraud, Civil Rights, and State Hearings, Division 19-22*

Your written request will automatically add your name to receive updates for the manuals requested.

- C **All County Letters** (ACL) and **All County Information Notices** (ACIN) These documents, prepared by the California Department of Social Services, contain program information and instructions for statewide social services programs administered by county welfare offices. Watch for those related to the IHSS program. These letters and notices are on the Internet at <http://www.dss.cahwnet.gov/getinfo/ltrnotice.html>.

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WHO RUNS IHSS?

FEDERAL GOVERNMENT

The Personal Care Services Program (PCSP) part of IHSS is part of the federal Medicaid social services program. Medi-Cal, the California equivalent of Medicaid, has additional laws and regulations that supplement Medicaid laws and regulations.

CALIFORNIA GOVERNMENT

Department of Health Services (DHS)

The DHS is the fiscal intermediary for Medi-Cal funds received from the federal government for IHSS (PCSP).

California Department of Social Services (CDSS)

The CDSS has administrative and supervisory responsibility to assure compliance with state and federal rules, passes through funding to the county level and operates the Case Management Information and Payrolling System (CMIPS).

While counties directly apply IHSS Program regulations, they often rely, for certain case situations, on CDSS staff to clarify regulations and interpret IHSS regulations so the county may properly apply them to the cases they administer.

COUNTY GOVERNMENT

Each county is responsible for receiving applications for IHSS services, determining income and resource eligibility, assessing the type and level of services needed, processing provider timesheets, and, in some counties, coordinating the hiring of care providers. Services are to be provided in a uniform manner in every county and be consistent with the state law. [W & I Code §12300(a); 12301(a); 12309]

The IHSS program is usually located in the local county social services office, adult services section.

LEGAL AUTHORITIES

IHSS (PCSP)

Federal

42 U.S.C. Section 1936a et seq.
42 CFR 430 et seq.

California

W & I Code §12300 et seq
W & I Code §14132.95 et seq.
CCR Title 22, Division 3, §5000 et seq.
CDSS MPP Division 30-700 et seq

IHSS (Residual)

California

W & I Code §12300 et seq.
CCR Title 22, §5000 et seq.
CDSS MPP Division 22 et seq.
CDSS MPP Division 30-700 et seq

WHEN IS IT USED?

Services, resources and support provided to an individual under a social services program must fall under one of five goals designated in Title XX of the Social Security Act. IHSS (PCSP) falls under Goal No. 4 which is: *"Preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less-intensive care."* [MPP 30-001.1]

IHSS is an alternative for individuals who might otherwise be placed in a nursing or other facility when they are unable to care for themselves in their own home. Personal care, domestic services and paramedical services are available. [W & I Code §12300(a); MPP 30-700.1]

IHSS provides basic services to individuals who **cannot** perform the services themselves. When a person is able to perform a task in a safe manner without an unreasonable amount of physical or emotional stress he or she is expected to take responsibility for that task. The person's capacity rather than level of dependence is used in the assessment of need. [MPP 30-756.32; 30-761.25]

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, California 95814



October 30, 1998

ALL-COUNTY LETTER NO.98-87

TO: ALL-COUNTY WELFARE DIRECTORS

Reason For This Transmittal

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☒ Court Order or Settlement Agreement
- ☐ Clarification Requested by one or More Counties
- ☐ Initiated by CDSS

SUBJECT: CLARIFYING PROCEDURES FOR ASSESSING A MINOR'S NEED FOR PROTECTIVE SUPERVISION IN THE IN-HOME SUPPORTIVE SERVICES PROGRAM

This All-County Letter informs counties of a clarification in the In-Home Supportive Service (IHSS) Program, which resulted from the settlements of the Garrett v. Anderson and Lam v. Anderson court cases. The clarification covers procedures for assessing a minor's need for protective supervision (PS) under Manual of Policies and Procedures (MPP) § 30-757.17.

Under the terms of the judgment and ACL No. 98-58, we are citing the state regulations, and statutes which this ACL clarifies.

Counties should apply the substantive standards for protective supervision in MPP § 30-757.17 while following the assessment procedures clarified in this ACL.

ASSESSING MENTAL FUNCTIONING OF MINORS

- A county social worker should always assess an IHSS eligible minor for mental functioning MPP § 30-756.1, 756.2, 761.261; Welfare & Institutions Code (WIC) § 12300(d)(4), 12301.1, 12309, (b)(1)(2)(c) The following steps must be taken when assessing a minor's mental functioning:
 - The county social worker must review a minor's mental functioning on an individualized basis and must not presume a minor of any age has a mental functioning score of "1." MPP § 30-756.372; WIC § 12301(a), 12301.1.

- A county social worker must assess all eligible minors for a mental impairment. In doing so, the worker must request the parent or guardian to obtain available information and documentation about the existence of a minor's mental impairment. MPP § 30-756.31, 756.32. For example, is the minor SSI eligible based on mental impairment? Or is the minor eligible for regional center services based on mental retardation, autism, or a condition like mental retardation or needs services like someone with mental retardation?
- A county social worker must evaluate a mentally impaired minor in the functions of memory, orientation, and judgement. MPP § 30.756.372.
- The county social worker should review the information, and documentation provided by the parent or guardian. A county social worker is not required to independently obtain such information and documentation, but should ask parents or guardians to do so if they can.

ADVISING PARENTS OF THE CONDITIONS FOR A MINOR TO RECEIVE PROTECTIVE SUPERVISION

- A county social worker must advise parents or guardians of a minor with a mental impairment of the conditions for receiving PS.
- A county social worker must advise parents or guardians of the availability of PS. A parent or guardian does not have to specifically request this information. MPP § 30-760.21, 760.23, 760.24; WIC § 10061, 12301.1, 12309(c)(1).
- A county social worker is not to presume that services, which are otherwise compensable, will be provided voluntarily by a parent or guardian or anyone else in accordance with MPP § 30-763.622.

ASSESSING A MINOR'S NEED FOR PROTECTIVE SUPERVISION

- A county social worker must assess the minor's need for PS under MPP § 30-757.17, if the minor has a mental impairment.
- A county social worker must assess each minor with a mental impairment for PS based on individual need. MPP § 30-756.1, 756.2, 761.261; WIC § 12300(d)(4), 12301.1, 12309(b)(1), (2)(C). In doing so, request the parent or guardian to obtain available information and documentation about a minor's mental impairment, including other agency records like those from regional centers with the written consent of parents or appropriate persons, and then review such information and documentation. (MPP 30-761.26). A county

is not required to independently obtain such information and documentation, but must ask the parent or guardian to do so.

- A county social worker must determine whether a minor needs more supervision because of his/her mental impairment than a minor of the same age without such impairment. WIC § 12300(d)(4).
- A minor must not be denied PS based solely on age. WIC § 12301.1.
- A minor must not be denied PS based solely on the fact that the minor has had no injuries at home due to the mental impairment so long as the minor has the potential for injury by having the physical ability to move about the house (not bedridden). MPP § 761.26, MPP § 30-763.1; WIC § 12300.
- A minor must not be denied PS solely because a parent leaves the child alone for some fixed period of time, like five minutes. MPP § 30-761.26, 30-760.24, 30-763.1; WIC § 12301.1.
- A county social worker must consider factors such as age, lack of injuries and parental absence, together with all the other facts, in determining whether or not a minor needs PS. WIC § 12301.1.

Any additional questions or clarification pertaining to this court case or the ACL may be directed to the Operations and Technical Assistance Units and the analyst assigned to your county at (916) 229-4000.

Sincerely,

***Original Document Signed By
Donna L. Mandelstam on 10/30/98***

DONNA L. MANDELSTAM
Deputy Director
Disability and Adult Programs Division

Attachment: Superior Court Order

REGIONAL CENTER INFORMATION

INSTITUTIONAL DEEMING

Minors, age 18 or younger and living at home, may become eligible for zero share-of-cost Medi-Cal through institutional deeming rules under the Department of Developmental Services' Home and Community-based Services waiver. Once eligible for Medi-Cal, services are provided as a Medi-Cal benefit through the IHSS Personal Care Services Program. In these cases, the consumer does not have to qualify for the IHSS (Residual) program in order to access Medi-Cal PCSP. The parent of a minor may not be the paid provider of PCSP services to the child.

USE OF GENERIC SERVICES

Regional centers have a mandate not only to serve persons with developmental disabilities, but to provide services at the maximum cost-effectiveness possible. The requirement for cost-effectiveness and use of generic services is found throughout the Lanterman Act. Several of those sections are listed below. IHSS is a generic resource for individuals who receive services through a regional center.

LANTERMAN ACT (WELFARE AND INSTITUTIONS CODE)

4646.5(a) The planning process for the individual program plan described in Section 4646 shall include all of the following: . . .

(4) A schedule of the type and amount of services and supports to be purchased by the regional center or obtained from generic agencies or other resources in order to achieve the individual program plan goals and objectives, and identification of the provider or providers of service responsible for attaining each objective, including, but not limited to, vendors, contracted providers, generic service agencies and natural supports. . . .

4647(a) Pursuant to Section 4640.7, service coordination shall include those activities necessary to implement an individual program plan, including, but not limited to, participation in the individual program plan process; securing, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; . . .

4648(a)(8) Regional center funds shall not be used to supplant the budget of any agency which has a legal responsibility to serve all members of the general public and is receiving public funds for providing those services.

4791(c) To carry out the intent of this provision, and notwithstanding Chapter 5 and Section 4643, each regional center contract shall include provisions which ensure the regional center will provide services to eligible individuals within the funds available in the contract throughout the contract term. Regional centers shall implement innovative, cost effective methods of services delivery, which may include, but not be limited to, the use of vouchers, individual or parent services coordinators, increased administrative efficiencies, and alternative sources of payment for services.

(h)(1) The plan submitted to the department may include but not be limited to:
(B) The maximization of all alternative funding sources, including federal and generic funding sources.

Remember, when a person needs IHSS services:

- < Be sure that accessing IHSS is a generic service listed in the IPP.
- < Be sure the continuing role of the regional center/supported living services agency is not to provide services that are available through IHSS or other generic services unless services are needed beyond the maximum IHSS hours available to the person.

THE END

FOR TECHNICAL ASSISTANCE OR INFORMATION ABOUT IHSS

Contact the IHSS Office at the local County Welfare/Social Services Office. Check the county government pages in the local telephone directory for a listing.

FOR REGIONAL CENTERS, CONSUMERS, AND VENDORS ONLY

For technical assistance or training on IHSS contact:
Department of Developmental Services
Services and Supports Section
(916) 654-1956



The energy challenge facing California is real. DDS encourages practical and feasible energy saving measures while considering the health and safety of clients, workers, and family members.